

**REPORT OF THE CAPE LIGHT COMPACT
IN SUPPORT OF ITS AGGREGATION PLAN**

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1. OVERVIEW OF THE REPORT

The Cape Light Compact ("Compact") files this Report in connection with the Compact's "Petition Seeking Approval of Aggregation Plan and Form of Electric Supply Agreement."⁽¹⁾ This Report provides an overview of the Compact's history, the legal framework in which it operates and its activities (Part II); a description of the procedures it followed to develop its Aggregation Plan (Part III); a description of the Request for Proposal ("RFP") process for soliciting bids from competitive suppliers (Part IV); a summary of its Public Education and Information Plan (Part V); a discussion of how the Compact's Power Supply Program meets the requirements of the Restructuring Act's municipal aggregation provisions, G.L. c. 164, §134 (Part VI); and an overview of the schedule for initiating service to customers (Part VII).

1. BACKGROUND OF THE CAPE LIGHT COMPACT

1. Passage of the Restructuring Act

In November, 1997, the Governor signed into law the Electric Utility Industry Restructuring Act, St. 1997, c. 164 ("Restructuring Act" or "Act"). The Restructuring Act fundamentally altered the business of generating, distributing and selling electricity in Massachusetts. Under the mandate and impetus of the Act, utility companies have unbundled their services; divested electrical generating units; reduced charges to comply with required discounts ; and opened generation service to competition. Since March 1, 1998, customers have been free, in theory, to purchase generation service from any duly licensed company of their choosing. In practice, less than one-half of one percent of customers have obtained supply competitively. These customers are almost exclusively larger industrial and commercial accounts. Municipal aggregation facilitates the transition of significant blocks of customers to competitive supply and significantly reduces the transaction costs of accomplishing this.

Prior to the debates over the Restructuring Act, the Barnstable County Commissioners participated in restructuring dockets (DPU 95-30 and 96-100) to support the option of allowing local governments to aggregate customer loads. The Commissioners, through filed and oral testimony, emphasized the Cape's high electric rates and the possibility that

small consumers could be left behind in a competitive market. The Department included local government aggregation options in the final orders of both dockets. The Commissioners and others then carried the concept of local consumer aggregation to the legislature as it took up consideration of the Restructuring Act in 1997. In the Act, the legislature established several routes through which public entities, corporations and non-profit organizations could aggregate consumers or otherwise work together to procure competitive supply. G.L. c. 164, §§134 to 137. Utilizing this new law, the Cape Light Compact developed its Aggregation Plan and Power Supply Program.

1. Formation of the Cape Light Compact

The Compact traces its formative stages back three years earlier than passage of the Act. In 1993-94, a broad range of Cape organizations, business and individuals engaged in a joint effort to produce the Barnstable County Energy Management Plan. The Barnstable County Commissioners ("Commissioners") adopted twelve recommendations from the Energy Management Plan, one of which was to establish the County Energy Management Committee ("Energy Committee"). With the support of its constituent towns, the Commissioners and a consortium that included the City of Chicago, National Consumer Law Center and Cape & Islands Self-Reliance, Inc. applied for a federal grant to study local powers related to electric franchises in a competitive environment. The Commissioners, as lead agency, received U.S. Department of Energy ("DOE") funding through the Urban Consortium Energy Task Force in October 1995 and produced the *Community Franchise Study: An Option for Local Governments Facing the Challenge of Electric Utility Industry Restructuring* in December 1996.

During 1995, the County also offered comments in DPU 95-30, a proceeding regarding electric industry restructuring. Its stated goals for restructuring included: 1) identifying options that would save money for residents, businesses and industry and spread those savings equitably; 2) assuring that restructuring advanced environmental and energy efficiency goals; and 3) guaranteeing that the new, restructured electric systems would still be accountable to the public and that competitive benefits would not be eroded over time. In its Order in DPU 95-30, pp. 18-19 (August 16, 1995), the Department identified options for providing customer choice including "... a structure whereby entities would compete to provide services to customers in a specific geographic area (e.g. a municipality, or group of municipalities, sometimes referred to as "Competitive Franchise.")"

In the spring of 1996, the Commissioners met with town officials on the Cape to discuss restructuring, report on the progress of the Community Franchise Study and discuss the possibility of local options for consumers. They also convened a regional meeting for the public and town officials to listen to presentations from a panel of power suppliers interested in serving consumers on the Cape, including representatives of Enron, Duke/Louis Dreyfus, and American National Power.

In May and June of 1996, members of the Barnstable County Energy Committee submitted a Resolution to their Boards of Selectmen entitled, "Resolution to Preserve Local Powers and Options and to Undertake Non-Binding Action." The Resolution (Vol. II, Tab 13) authorized the County to explore market prices for electric power and services on behalf of the towns. The Resolution was adopted by the towns of Barnstable, Bourne, Eastham, Falmouth, Harwich, Provincetown, Sandwich, Truro, Wellfleet, and Yarmouth. In addition, the County Commissioners began circulating materials to educate the public about restructuring and its "Community Choice" program. (Vol. II, Tab 14, "Information Sheet for Consumers").

In July and August 1996, the Commissioners convened meetings with municipal officials across the state to encourage their participation in state proceedings concerning restructuring. In November, many local officials participated in the Department's public hearing on DPU 96-100 in Marstons Mills on Cape Cod.

On November 25, 1996 the County Commissioners requested that an elected representative from each of the 15 Barnstable County towns participate on a steering committee to address deregulation of the electric utility industry and local options for consumers.

In December, the Department issued its model rules and proposed legislation for electric industry restructuring, in DPU 96-100. The Order included an option for consumers to aggregate under their municipal governments.

At a meeting held on February 5, 1997, nine towns (Barnstable, Bourne, Chatham, Eastham, Falmouth, Orleans, Sandwich, Truro, and Yarmouth) agreed to form a planning committee to be known as the "Cape Light Compact Planning Committee" made up of local officials and others with utility experience appointed by the Boards of Selectmen. The purpose of the group was to explore how Cape towns could work together to create an option for consumers in the competitive marketplace for electricity. The group was interested in the potential to reduce the high rates Commonwealth Electric customers paid, as these rates were often the highest for any major utility in the state and among the highest in the country.

At a subsequent meeting on March 12, 1997, the Cape Light Compact Planning Committee held a press conference to announce the effort to form the "Cape Light Compact" and to introduce a Resolution being offered at several Spring Town Meetings. That spring, thirteen towns adopted various but similar forms of the Resolution, authorizing the towns to participate jointly with other towns in a power supply contract.

Following passage of the Resolution, in May 1997 the Cape Light Compact Planning Committee appointed a subcommittee to develop the "Intergovernmental Agreement of the Cape Light Compact," the Compact's founding document.

In November 1997 the Massachusetts Legislature passed the Restructuring Act, which included provisions for municipal aggregation. The Act set March 1, 1998 as the opening

of the competitive power supply market in Massachusetts. The Compact immediately began drafting its Aggregation Plan (see Vol. II, Tab 5, Aggregation Plan Chronology). The Compact also began development of a Request for Qualifications ("RFQ") to gather information from prospective power suppliers.

In April 1998, the Compact released the RFQ and received responses from six suppliers who expressed an interest in serving Cape and Vineyard consumers at prices below standard offer. (See Vol. II, Tab 7, RFQ/RFP Chronology).

By May, 1998, all fifteen Barnstable County towns and the County itself formally joined the Compact. In June, 1998, the Compact, upon request, expanded its membership to include Dukes County and its six constituent towns (Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury, and West Tisbury).⁽²⁾ There are over 185,000 electricity customers in the Compact's twenty one member towns.

1. Compact's Goals, Purposes and Structure

The Compact's governing document is the "Inter-Governmental Agreement of the Cape Light Compact" ("Agreement"). Vol. II, Tab 1. This Agreement was developed after several meetings of the Compact's Governing Board and with town counsels. Each member town formally executed the Agreement after full discussion.

The Compact's goals, as stated in the Agreement, include the following:

- to provide the basis for aggregation of all consumers on a non-discriminatory basis;
- to acquire the best market rate for electricity; and
- to provide and enhance consumer protection and options for service under contract provisions and to allow consumers who choose not to participate to opt-out.

In addition, the Agreement includes goals relating to quality of service, environmental protection, renewable energy development, demand side management and energy efficiency. To carry out some of these goals, the Compact has participated in several proceedings before the Department of Telecommunications and Energy and in stakeholders meetings convened to discuss energy efficiency programs.

The Compact is governed by a board made up of one representative for each member town (often a selectman), one representative for Dukes County, and a County Commissioner appointed by the Barnstable County Board of Commissioners. The board holds regular meetings twice a month and its Executive Committee and other working committees often meet between these meetings.⁽³⁾ The board's meetings are noticed in each member town in advance

and are open to the public. The Compact's board meetings and its activities have been widely publicized in local newspapers, on radio and on cable television. The public is generally aware of the Compact's activities. Exhibit Vol. II, Tab 15 (sample news clippings).

The board benefits by having a number of members with highly relevant backgrounds and skills, including a former Vice President of the New England Electric System who also served as Chairman of the NEPOOL Executive Committee; a Ph. D. economist with extensive utility regulatory experience; an electrical engineer who spent thirty five years working for Central Hudson Gas & Electric, including as manager of customer service and manager of transmission and distribution systems; a retired executive with over thirty seven years of experience in engineering, manufacturing and management positions with ABB/Combustion Engineering who negotiated power supply contracts with utilities and municipalities; an energy management/energy conservation consultant; the executive director of a non-profit organization with experience operating energy efficiency programs and an oil-buying cooperative; and several other members with extensive government, management and business consulting experience.⁽⁴⁾

Since its founding, the Compact has tried to ensure that consumers have the opportunity to participate in the competitive market and in policy determinations that shape the market, and that the market reflects a balanced combination of consumer and supplier interests. The Compact has taken a comprehensive approach that includes: (1) developing a "Community Choice Power Supply Program" that will reduce the cost of generation supply for customers; (2) development of an energy efficiency program that will provide enhanced benefits and a related comprehensive education program that will assist with market transition; and (3) representing the interests of consumers before the legislature, the Department and other agencies as the industry continues to evolve.

- **DEVELOPMENT OF THE AGGREGATION PLAN**

In order to become an approved municipal aggregator, the Compact must develop an aggregation plan in consultation with the Division of Energy Resources ("DOER") and through a process to gather input from the public. The Compact's resulting Plan meets the requirements of G.L. c. 164, §134(a).

The Compact finalized its Aggregation Plan ("Plan") after extensive meetings, discussions and correspondence with the DOER. The Compact also offered the public ample opportunity to comment. Two copies of the Plan were sent to each Town Clerk's office for public review. Both the DOER and the public participated

in the drafting of the Plan and commented on its content. The Plan (Vol. I, Tab 3) fully complies with the mandates of the statute.

The Compact prepared an outline of the Plan in March 1998 and met with the DOER on March 24, 1998 to discuss the outline. Over the next seventeen months, the Compact Governing Board extensively discussed and reviewed the Plan, producing four drafts. It also continued consulting with DOER throughout this period.

The Compact completed the first complete draft of the Plan in July 1998. On July 17, 1998 Compact staff met with DOER to explain the draft Plan and solicit comments. DOER reviewed this draft and on August 19, 1998 sent a letter containing its initial comments. On September 3, 1998 the Compact's Executive Committee met with DOER to discuss those comments and, by letter dated September 22, 1998, offered a written response to DOER. The Compact worked on revising the Plan during October 1998 and produced a second draft in November. The Compact again met with DOER on November 30, 1998 to discuss the new draft. DOER provided additional comments and questions in December. The third draft (noted as the "Review Copy") was produced in February 1999, and the Compact once again met with DOER on February 4, 1999.

The focus then shifted to public review of the plan. In March, 1999, the Compact conducted a final internal review of the Plan. The Compact distributed two copies of the Plan to each member town hall on the Cape and Vineyard to facilitate public review and issued a press release. In mid-April, the Compact announced a formal hearing on the Aggregation Plan set for April 21, 1999, at which time the Compact would receive oral and written comments. Vol. II, Tab 4 (hearing notices and sign-in sheet). The Compact provided the public a full and fair opportunity to comment.

Following the public hearing, the Compact completed the Final Draft Aggregation Plan in May 1999. The Compact now submits the Plan to the Department.

The Compact has fully complied with its obligations to consult with the DOER while developing its Plan and to offer the public an opportunity to review and comment on the Plan.⁽⁵⁾ Section VI of this Report addresses how the Plan meets the substantive requirements of G.L. c. 164, §134.

- **THE RFP PROCESS**

The market for supplying power to municipal aggregators is new and evolving. In order to obtain bids for competitive power supply, the Compact had to solicit

information from potential suppliers and develop mutual understandings with them about the nature of serving municipally aggregated loads.

As a participant in the market, the Compact worked with suppliers to address specific problems and adverse conditions. Prior to the opening of the market in March 1998, the Compact organized meetings with competitive suppliers interested in serving Cape and Vineyard consumers, held ongoing discussions with suppliers and state officials, and monitored the market. Following the opening of the market, the Compact engaged in a two-year process that included these three stages: 1) the RFQ issued in April 1998; 2) an RFP issued in August 1998; and 3) an RFP issued in January 1999. This process took place with wholesale prices for long term contracts generally rising; with suppliers growing increasingly wary about unseen risks and uncertainty over market rules; and with gradually waning supplier optimism about the prospects for a vibrant market, due to the levels of standard offer and default service prices. While suppliers were initially optimistic enough about the market to accept early losses as a means of gaining market share, this eventually gave way to a pessimism that resulted in the erosion of supplier interest in Massachusetts.

- **The RFQ Process**

The Compact released the RFQ on April 1, 1998. The RFQ was designed to develop a list of qualified bidders who would receive a subsequent RFP package. The Compact was also specifically testing the interest of suppliers to serve the fully aggregated Compact load (rather than selected customer classes) and their willingness to start serving all customers at the same time (versus phasing in service to customer classes over a period of time).

The Compact sent the RFQ to a list of registered Massachusetts suppliers and other suppliers who expressed interest, and posted it on a website. A press release was sent to ten national industry media outlets as well.

The Compact received six responses to the RFQ from qualified companies. It then engaged in discussions with these respondents and with other suppliers who had expressed an interest but did not respond. The Compact formulated detailed evaluation criteria for the RFQ responses. Several of the suppliers demonstrated that they were reputable firms and that they were able and interested in providing power for all classes of customers below standard offer rates. Based on the findings of the RFQ process, the Compact decided to release a Request for Proposals.

- **The August 5, 1998 RFP**

The RFP was mailed directly to 12 competitive suppliers on August 5, 1998; sent to ten national industry media outlets; and posted on Barnstable County's Cape cod Commission website. The Compact held a Bidders' Conference on September

1, 1998 and set a deadline of October 5, 1998 for submitting proposals. Five competitive power supply companies attended the Bidders' Conference and submitted the required fee to obtain the complete bid package.

On the October 5 deadline, three suppliers submitted letters: U.S. Generating, New Energy Ventures, and the Southern Company. All proposals were deemed non-responsive. Problems included the uncertain and evolving nature of market rules; low standard offer prices; the pending referendum on the Restructuring Act; and failure to understand what was required to serve Cape and Vineyard customers at retail. Bidders were only willing to serve municipal and large commercial/industrial customers on the Compact's terms. The Compact maintained its position that it would only accept bids that were below standard offer for all classes of customers. On October 28, the Compact Governing Board agreed to hold discussions with rejected bidders and other suppliers who had expressed interest, and, depending on the outcome of those discussions, to consider revising and reissuing the RFP. The Compact engaged in discussions with suppliers from November 1998 to January 1999 and addressed real and perceived barriers to supplying power on the Compact's terms. The Compact required each supplier to confirm its capability to provide prices below standard offer for all customer classes on a timely basis and the ability to manage retail transactions for a large group of customers.

During this period of time, several positive changes occurred in the market, including: defeat of the referendum to overturn the Restructuring Act; approval of ISO NE rules by FERC; and an increase in Commonwealth Electric's standard offer price from 3.5¢/kWh in 1999 to 3.8¢/kWh in 2000.

Based on the discussions and more favorable market conditions, the Compact issued a revised RFP on January 29, 1999.

- **The January 29, 1999 RFP**

The second RFP package was mailed directly to 13 suppliers and publicized. The response deadline was originally March 12, 1999, later changed to March 26, 1999 at the request of suppliers. On March 17, the Compact responded to questions submitted by prospective bidders and sent a copy of the questions and answers to all bidders. On March 26, four suppliers submitted proposals. All proposals were deemed responsive.

In accordance with G.L. c. 30B, §6(k), the Compact had designated Margaret T. Downey, Assistant County Administrator for Barnstable County, as its chief procurement officer for purposes of reviewing the proposals and making recommendations to the Compact's board. Ms. Downey worked with the Compact's legal counsel and technical consultant. The Governing Board also established an advisory group made up of two Executive Committee members (Robert Jones, Esq. and Robert Mahoney) and four other board members who had

extensive utility or utility-related experience (Robert Bigelow, NEES; Barry Worth, Central Hudson Gas and Electric; John Cunningham, Combustion Engineering; S. K. Johnson, Arthur D. Little).

The Compact Governing Board had previously established an evaluation process for the August 1998 RFP and utilized it again for the January 1999 RFP.⁽⁶⁾ The first part of the process involved clarifying and refining bids. The second part engaged specific suppliers in contract discussions.

The Compact's contract team began meeting with suppliers in mid-April to discuss proposed terms and refine the bids. As a result of this initial round of meetings, three suppliers submitted acceptable refined bids and the Compact focused its attention on these potential suppliers.

During the week of May 14, 1999, the Compact focused its attention on Select Energy as offering a proposal that best met the desired evaluation criteria. The Compact began detailed contract discussions with Select.

Contract discussions were suspended, oil prices rose and the proposed bid was withdrawn. In November 1999, the parties recommitted themselves to negotiating a mutually-acceptable Electric Supply Agreement and reached agreement on February 25, 2000. The Compact Governing Board voted to recommend the ESA to the member towns on March 1, 2000.⁽⁷⁾

The ESA provides all interested customers with the option to obtain supply at prices below the standard offer, as required by the Restructuring Act. Under the schedule for service, all customers on standard offer or default service who do not choose to opt-out prior to the initiation of service will be switched to Select as their supplier. Customers will also retain the ability to return to standard offer for a period of 180 days after start-up of service.

Participating customers will be phased into service by class under the ESA. Because smaller-volume customers are more expensive to serve and standard offer prices rise over time, municipal and large commercial/industrial customers will be offered service first, in December, 2000 (and subject to Select's option to delay this date). Additional municipal accounts will be added in March 2001; smaller commercial loads will be added in September, 2001; and residential customers will be added in September, 2002. Once service begins to the first class of customers, all customers will be phased in during a period extending 24 months or less. However, given the volatility of the wholesale market, Select has the option to delay the date upon which the entire service program will begin. If there is a delay, Select must provide periodic notices of whether market conditions are yet conducive for initiating service. Select may also provide an "Unscheduled Notice of Contract Availability" proposing prices and an implementation schedule different than those contained in the ESA. During this time, the Compact is also free to pursue alternative power supply. This flexible approach balances the

Compact's goal of serving all customer classes with the supplier's concerns about market volatility and the need to lock in prices and schedule well in advance of service.

- **PUBLIC EDUCATION AND INFORMATION PLAN**

The Compact has carried on, and will continue to carry on, a general education program through the media; through a network of local government, social, civic, business, and religious organizations; through public meetings and presentations; and through targeted mailings, hand-outs and electronic communications. This program relies on a traditional "layering" approach of presenting specific messages through varied media. The general education program provides information on electric industry restructuring and competition and on the Compact's programs. The Compact has formulated specific education and information plans for the Power Supply and the Energy Efficiency Programs. Given the purpose of this Report, the description below describes the information and educational activities related to the Power Supply Program.

The Power Supply Program Education and Information Plan ("Education Plan") focuses on: 1) informing consumers about the competitive market and options available; 2) easing the transition to a competitive supplier under the Aggregation Plan; and 3) assuring that consumers are well aware of their rights to participate or opt out. It is specifically designed to meet the information needs of consumers and legal requirements regarding initial notification, quarterly notifications, and other notifications required by law. The Compact has received a grant from the DOER that it will use to develop information targeted to each customer class. The Compact will also develop its own website under the grant that will offer information for consumers on the Compact's program and electric industry restructuring and that will provide links to other related websites. The Compact's supplier has agreed to work with the Compact on the Education Plan. The Compact plans to continue to confer with the Department's Consumer Division on its general education plans and specific information and notifications to be provided to consumers.

The timing of the Education Plan will match the phase-in of service. The Education Plan will not begin until just prior to the initiation of service to customers, and will be carried out over the term of the phase-in process.

For large commercial/industrial customers (G3), who are scheduled to receive service first, the Compact will use direct communications. There are twenty customers in this class, some of whom may already be receiving competitive supply. A small number of municipal customers not presently receiving supply under the HEFA/Exelon program are also eligible for this first start-up group. A

mass media approach is inappropriate for this first phase-in group, and would confuse other customers who may not start service for several months or more. Direct communications to this small group will combine direct mailings, telephone calls, and faxes and e-mail of general educational information.

For the second phase-in group, consisting of municipal customers with HEFA/Exelon contracts, the Compact will use direct mail, e-mail, telephone calls, and communication through municipal organizations.

For the third phase-in group consisting of smaller commercial accounts (approximately 24,000 G1, G2, G4 and G5 accounts), mass media will be used, as well as direct mail, e-mail, and business group communications and presentations.

For the fourth phase-in group consisting of approximately 154,000 residential customers, the Compact will use mass media, direct mailings, and information distributed through local government, social, civic and religious organizations. Information sheets specific to low-income and other types of residential customers will also be disseminated. Local service groups for low-income customers will be consulted with in developing information and will be briefed on the rights and opportunities for these customers.

Each specific communication required is discussed below.

- **Required Initial Notification of Service**

The Compact will provide, through direct mail, an advance notice of the initiation of power supply 60 days prior to the start of service date. This notification will be sent to customers on standard offer or default service in each customer class according to their phase-in date. As required by law, the notification will: 1) inform consumers they have the right to opt-out of the aggregated entity prior to the start of service, or, if they do not opt out, may return to standard offer service at no penalty within 180 days of the start of service; 2) prominently state all charges to be made and compare the price and terms of the Compact contract to the price and terms of Commonwealth Electric's standard offer; 3) explain how to opt-out; 4) state how to access the standard offer; and 5) provide written notification of any charges the supplier may impose for opting out after the 180 day period.

The notification will consist of a letter to each standard offer or default service customer and an accompanying pre-addressed postcard with a simple checkoff and signature line to opt out. The card will be addressed for return to Commonwealth Electric and will need to be postmarked at least 10 days prior to the start of service to guarantee that the consumer's name will be removed from the transition list. A customer wishing to opt out and return to standard offer after the transition date will need to fill out this card, or a substitute card which may be requested from the Compact, and return it to Commonwealth Electric within 180

days after the start of service. After the 180 day period, the procedures outlined by the Department in 220 CMR 11.04 regarding standard offer and default service will apply.

The Compact and its customers can achieve significant cost savings if the Compact can gain access to Commonwealth Electric's monthly bill for inserting the required notification. The Compact specifically seeks a ruling from the Department that it may insert the initial notification in Commonwealth Electric's monthly bill so long as it pays the full cost of preparing and printing this message and reimburses the company for any incremental postage costs.⁽⁸⁾ (See §VI.B.5.b for further explanation).

- **Required Quarterly Notification**

Under 220 CMR 11.06(2)(d), a competitive supplier is required to provide quarterly notifications to consumers that contains information about "fuel mix, emissions and labor characteristics associated with the Competitive Supplier's company resource portfolio." In a municipal aggregation program, this quarterly notification requirement adds significantly to program postage and mailing costs (approximately \$300,000 annually for 185,000 customers, based on discussions about mailing costs with Commonwealth Electric). The Compact and its supplier can communicate this required information more effectively through other means than a bill insert. Because the Cape Light Compact comprises a distinct geographic and marketing region, this offers an opportunity to communicate some of the required quarterly notification information with greater visibility than a mail insert. Information on fuel sources, emissions, and labor characteristics can be communicated on a regular basis to consumers in the region via overlapping vehicles to gain maximum penetration of the information. These vehicles include news releases; public service announcements ("PSAs"), with a repeated message clip for the town government channel and other cable stations; radio PSA notices directing consumers where the full information can be found; announcements at meetings of town selectmen and town councilors (which meetings are also carried on local cable television and covered by news media); inserts in newsletters of social, civic, business, and religious organizations; public presentations; and electronic communications, including posting on the Compact's website. Through these vehicles, the Compact can also explain the relevance of this information for consumers.

Other required information, including terms of service and price information, will be sent directly to consumers through other planned mailings.

Given the potential for greater effectiveness of delivery of the information on fuel types, emissions and labor, and the potential for savings through an alternative method of notification, the Compact specifically seeks a waiver of the provisions of 220 C.M.R. 11.06 that would require the Compact or its supplier to mail this information directly to customers. (See §VI.B.5.b).

- **THE PLAN MEETS THE REQUIREMENTS OF THE RESTRUCTURING ACT**

The Act requires a municipal aggregator to submit its aggregation plan for "final review and approval" by the Department. The Act also specifies several issues that a plan must address and prohibits the Department from approving a plan "if the price for energy would initially exceed the price of the standard offer." G.L. c. 164, §134(a). The Compact's plan both meets this price test and addresses all of the required issues.

- **Price Terms**

The price terms included in Exhibit A of Electric Supply Agreement ("ESA", Vol. I, Tab 4) are lower than standard offer price, for every customer class and for every time period in which those prices will be available. The Compact negotiated an agreement under which customer loads are phased in over time so that the supplier's prices, when available, always beat standard offer prices. This arrangement insures that customers receive an immediate financial benefit once they are switched over to the new supplier.

The Compact has publicly acknowledged that the differentials between its supplier's prices and standard offer prices are small, ranging from approximately 1% to 5% depending on the customer class and year. These differentials reflect the realities of the market, in which standard offer prices are not designed to reflect the costs of providing electricity at retail and in which the overhead costs of serving customers, especially small-volume customers, are high. As standard offer and default service prices begin to diverge, however, the perceived benefits of the supplier's prices will increase. As of late March, 2000, more than 50,000 Commonwealth Electric customers were on default service. Approximately half of those default service customers would be within the Compact's territory, based on the fact that the Compact territory makes up half of Commonwealth Electric metered customers and that the territory is an area of high population growth and seasonal mobility among customers. The Compact's agreement with its supplier is likely to provide sizeable benefits for these customers once default prices are uncoupled from standard offer. For example, if default prices are only 1 cent higher than standard offer prices, the typical (non-heat) residential customer would save about \$80 per year.

Beginning in March 2005, distribution companies will no longer be required to offer standard offer service (G.L. c. 164, §1B(b)) and all customers will either have to choose a competitive supplier or go on default service. By setting up a successful Aggregation Plan and Power Supply Program now, the Compact is gaining the market presence and experience that will allow it to help all Cape Cod and Martha's Vineyard customers obtain competitively-priced electricity in the future. The Compact's model will also help other communities in Massachusetts that are considering their own aggregation programs and facilitate customer

transition to competitive supply at reduced transaction costs. The Compact is the first entity in the Commonwealth to successfully aggregate and contract for power supply for large numbers of residential and small business customers, customers who suppliers have shown little willingness to serve. In addition to providing modest savings for customers in the near term, the Compact is providing an opportunity for consumers to obtain larger savings in the future.

- **Required non-price provisions**

An aggregation plan must not only offer customers prices lower than standard offer, it must also:

provide for universal access, reliability, and equitable treatment of all customers [and] . . . include . . . an organizational structure of the program, its operations, and its funding; rate setting and other costs to participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and termination of the program.

G.L. c. 164, §134(a). Each of these provisions is addressed below.

- **Universal access**

The Compact discusses universal access in its Plan, §7.0. The Plan provides for universal access by guaranteeing that all customer classes will be included in the Power Supply Program under equitable terms. This general principle is supplemented by specific provisions of the ESA that are discussed below.

The ESA requires the supplier to offer supply to all customer classes, at prices below current standard offer prices, once the supplier serves any individual customer class. ESA, §§ 6.7, 8.2 & Exhibit A. Thus, once the supplier provides any service to large industrial or municipal customers, it is contractually committed to serving all of the other customer classes as well.

The ESA calls for a scheduled phase in of service, starting in December, 2000, when industrial, street lighting and other municipal accounts may first be offered competitive supply, and ending in September, 2002 when residential customers may first be offered competitive supply.⁽⁹⁾ The ESA thus offers access universally to all customer classes, at the earliest date that the market will allow. The Compact rejected proposals that would have allowed only favored customers

(those with large loads and/or high load factors) to be served, leaving smaller customers behind. No supplier, however, was willing to start service to all customer classes on the same date.

The Plan and ESA also provide universal access by allowing current default service customers and customers moving into its territory to obtain supply from the Compact's designated supplier. Since default service rates may soon diverge from and become higher than standard offer rates, this aspect of the program provides substantial benefits to a significant portion of the customer base. Cape Cod and Martha's Vineyard have relatively high rates of new customers each year, due to overall growth⁽¹⁰⁾ and the high turnover in resort areas. This only increases the value of this component of the Program.

- **Reliability**

The Plan addresses reliability in §9.0. The Compact interprets reliability to include adequacy of the technical arrangements that assure dependable supply (adequate generation and transmission arrangements, reserves, etc.) and adequacy of the financial guarantees provided by the competitive supplier in the event of default. On the technical side, the supplier is committed to providing "All Requirements Power Supply" under Article 2.1 of the ESA; to making all necessary arrangements for this supply under Article 6.6.; and to using proper standards of management and operations under Article 6.2. Other provisions of the ESA also relate to the supplier's obligation to provide a reliable supply (e.g., §8.2 ["Obligation to Serve"]; §10 ["Service Reliability and Related Obligations"]).

The Plan and ESA also contain broad liability, insurance and indemnification provisions

to protect the interests of consumers if the supplier fails to meet its technical reliability requirements. ESA Article 15 contains a broad indemnification for towns. Article 16.1 requires the supplier to carry \$5 million of comprehensive liability insurance and at least \$25 million of excess liability coverage, listing the Compact and towns that participate in the Power Supply Program as named insureds. In addition, Article 16.2 requires the supplier to establish sufficient back-up financial sureties (through a letter of credit, escrow, corporate guarantee, or other means) in an amount no less than the cost to consumers of the supplier's failure to supply for six full months. This cost is calculated by comparing the price at which the supplier would have provided electricity under the ESA to the price of default service, for the estimated number of kWh to be delivered in the six month period, the period of time the Compact believes would be necessary to find an alternative supplier.

The Plan thus provides extensive measures to insure technical reliability and sufficient financial assurances to back up the supplier's pledge of reliable supply.

- **Equitable treatment of customers**

Section 134 requires a municipal aggregator to provide for equitable treatment of customers. The Compact reads this requirement as largely overlapping with the requirement of universal access, but as also mandating that all customers have the right to raise and resolve disputes; to be provided with accurate information; and to exercise all of the rights they may have under the Restructuring Act and subsequent rules promulgated by the Department and the Attorney General. The Plan discusses equitable treatment in §8.0. The ESA also provides for equitable treatment in several places. Article 3.1 guarantees all customers the right to opt out or switch providers; Article 3.2 insures that all customers receive the notice of rights, terms and conditions required by law; and Article 6.7 requires the supplier to provide service on a non-discriminatory basis. Further, Article 11 mandates that the supplier will comply with all of the Department's rules and regulations governing service to customers as well as provide the Compact with a written, detailed description of all billing and termination, customer service and confidentiality policies. Articles 6.9, 6.10 and 6.11 are designed to protect customers from any potentially inaccurate, misleading or unsolicited mailings or communications from the supplier.

The Compact's Plan and ESA fully provide for equitable treatment of customers.

- **Organizational structure of the program**

The Compact's organizational structure is fully described in §2.0 and 2.1 of the Plan. The Compact is proud of the important role that consumers and publicly elected officials play in governing its operations. Its organizational structure guarantees that the Compact operates in the public interest.

- **Operations**
- **In general**

The Compact's operations are generally described in §§2.0 and 4.0 of the Plan. The Compact's governing board has overall responsibility for operations. Each member town has one representative on the board. Barnstable County serves as the fiscal and administrative agent for the Compact, under an Administrative Services Agreement. Vol. II, Tab 2. Barnstable County provides day-to-day operational management and supervision; acts as the Compact's procurement agent; and provides meeting space and administrative support. The Compact, through Barnstable County, will monitor implementation of the ESA on behalf of all of the towns that decide to participate and on behalf of customers.

The Compact's planned program operations include the Community Choice Power Supply Program, as embodied in the Plan and ESA; the Energy Efficiency Program⁽¹¹⁾; and continued representation of the interests of Cape and Island

consumers before the Department and other forums. These programs are described in §2.3 of the Plan. Staffing is described in §2.4.

- **Particular operational issues**

Section 4.0 of the Plan describes seven key steps regarding the Program: (1) acceptance of the ESA by member towns; (2) Department approval of the Plan and Program; (3) final signing of the ESA by member towns; (4) notification of customers; (5) notification of Commonwealth Electric; (6) activation of generation service to customers; and (7) customer opt-out. There are three unresolved issues regarding notification of customers and customer choice that merit the Department's attention. The Compact requests specific rulings on each of these points.

First, the Compact must notify all customers "in advance of automatic enrollment that they are to be automatically enrolled and that they have the right to opt-out of the aggregated entity without penalty." G.L. c. 164, §134(a). The Compact can carry out this obligation either by having its Supplier send the required notice in a separate envelope, or by including the notice in the monthly billing envelope that Commonwealth Electric Company ("Company") sends out. The Compact estimates that the latter option reduces the cost by two-thirds, from approximately \$75,000 to \$25,000, based on conversations it has had with the Company. Under the Compact's agreement with its supplier, the supplier must return to the Compact and its member municipalities a portion of any savings achieved by reducing notification costs. The Company, however, is not willing to grant the Compact access to the envelope without an order from the Department. The Company has stated that if it voluntarily grants the Compact access, this will establish a precedent that would allow private aggregators and other parties access to its monthly billing envelope.

While the Compact has sought voluntary access to the Company's monthly envelopes, it agrees that granting voluntary access to the Compact could make it harder for the Company to deny purely private parties access as well. The Compact therefore seeks an order that it or its supplier may include in the Company's monthly envelope the notifications to customers required by law. Only municipal aggregators must provide this notification, and granting the Compact's request will therefore not create a precedent for any private party.

Second, the Compact plans to include in its Program all customers who move into its service area after the start of service by the supplier, unless those new customers affirmatively opt out. New customers now are placed on default service, except for low-income customers who have the right to take standard offer service. In the near future, default service rates will be uncoupled from standard service rates and will likely exceed those rates by a significant margin. Therefore, new customers will gain if they are served by the Compact's designated Supplier rather than on default service. New customers will be given

notice of their right to opt out of the Compact's power supply program if they so choose. The right of new customers to choose any supplier, including default service from the Company, will be fully preserved.

Third, the Compact believes that it can provide more effective information disclosures to customers in order to comply with the intent of G.L. c. 164, §1F(6) and the Department's implementing regulations, 220 C.M.R. 11.06. The Compact's alternative Public Education and Information Plan is described above in Section V.

- **Funding**

Funding for the Compact has come from appropriations by Barnstable County and member towns in Dukes County. Funding is more fully described in §3.0 of the Plan.

With local town and Department approval, the Compact has the right under Article 5.1 of the ESA to impose a small per kWh charge (no greater than \$0.0003, or three tenths of one mill) to cover the cost of its administrative operations. The Compact expects that Barnstable County and the Dukes County towns will continue their financial support for the administrative work of the Compact, but the Compact included this provision in the ESA at the suggestion of DOER to guarantee that its operations would not be disrupted if these governmental entities decide to reduce their support in the future.

Article 5.2 of the ESA allows the Compact to impose a small per kWh charge (no greater than \$0.00025 in the initial year and \$0.00075 in subsequent years) to fund renewable energy or energy efficiency activities. This provision is intended to provide each town the flexibility to generate funding for energy efficiency and renewable activities in the event that the legislature does not extend the life of the existing charges included in the Restructuring Act (St. 1997, c. 164, §37). Some towns may choose to use the renewable energy surcharge provision to supplement the state-mandated funds.

- **Rate setting and other costs to participants**

The Compact discusses rate setting and other costs to participants in §6.0 of the Plan. The actual cost to ratepayers of the Compact's current supply arrangement are included as Exhibit A of the ESA. The generation charges are less than the Company's standard offer prices for every customer class.

The ESA includes two provisions (Articles 5.1 and 5.2) under which the Compact may impose additional charges to cover the Compact's administrative costs and to support the development of renewable energy and energy efficiency projects. These provisions are discussed in Section VI.B.6, above ("Funding").

The ESA does not include any additional charges for consumers who exit the aggregation program in a manner consistent with their meter read and billing cycle.

- **Methods for entering and terminating agreements with other entities**

The Compact discusses the methods for entering and terminating agreements with other entities in §5.0 of the Plan. The Compact's board takes formal votes before entering and terminating agreements with other entities. The Compact, where applicable, also complies with relevant provisions of G.L. c. 30B (the public bidding law), the Intergovernmental Agreement of the Cape Light Compact, the Barnstable County Charter (since the county is the Compact's fiscal and administrative agent), and other state and federal laws.

- **The rights and responsibilities of program participants**

The Compact addresses the rights and responsibilities of program participants in §10.0 of the Plan. In towns that sign the ESA, all customers have the right to participate in the Compact's Community Choice Power Supply Program. Participants will enjoy the same consumer rights as other customers served by competitive suppliers. (Article 11 of the ESA commits the supplier to complying with the Department's regulations). Program participants also have the right to participate in the Compact's decision-making processes, by attending its public meetings; by contacting the Governing Board's representatives; by contacting their own Town Council or Board of Selectmen; or by expressing their views at various public hearings the Compact holds. Customers also have the right not to participate in the Compact's Program, by choosing Commonwealth Electric or some other supplier as the source for generation service.

A participant has the responsibility of paying the bills sent by the Compact's designated supplier (whether sent directly or as part of Commonwealth Electric's bill) and to comply with the supplier's billing, termination and customer service practices, all of which must be in writing and approved in advance by the Compact (ESA, Article 11).

- **Termination of the program**

The terms of the ESA runs through December 31, 2004, unless renewed by the parties or earlier terminated as permitted under the terms of that agreement. ESA, Articles 4.1, 4.5. The Compact has every intention of continuing its Power Supply Program beyond December 31, 2004 by making appropriate arrangements under the ESA or a successor agreement. The Compact anticipates that any future power supply arrangement would not require it to change its Plan, and that the Compact would therefore continue to operate its Plan under the approval it now seeks.

The Compact, however, could terminate the Power Supply Program upon the termination or expiration of the ESA without any extension, renewal, or subsequent supply contract being negotiated (Plan, §4.2). The Compact will provide customers notice at least 90 days in advance of program termination, unless emergency circumstances do not allow it to. Customers would then choose to return to default service or locate another competitive supplier. Low-income customers could return to standard offer service.

- **Other Program Requirements (choice, enrollment, notice)**

In addition to the price and non-price requirements discussed in the preceding sections, the Restructuring Act imposes the following requirements on municipal aggregation programs regarding customer choice and customer enrollment:

Participation by any retail customer in a municipal or group aggregation program shall be voluntary Within 30 days of the date the aggregated entity is fully operational, such ratepayers [who have not elected an alternative supplier] shall be transferred to the aggregated entity according to an opt-out provision herein. Following adoption of aggregation through the votes specified above, such program shall allow any retail customer to opt-out and choose any supplier or provider such retail customer wishes. Once enrolled in the aggregated entity, any ratepayer choosing to opt-out within 180 days shall do so without penalty and shall be entitled to receive standard offer service as if he was originally enrolled therein.

G.L. c. 164, §134(a), ¶5. Aggregators must fully inform ratepayers of their right to choose and of the enrollment procedures, in advance of enrollment. *Id.*, ¶6.

The Compact's Plan (§§4.1.4, 4.1.7) and the ESA (Article 3) fully preserve customer choice. Every customer will have the right to opt out of the Compact's Power Supply Program.

Sixty days prior to the initiation of service for a particular customer class, the Compact will send notice to Commonwealth Electric customers on standard offer or default service in that customer class of their eligibility to receive service from the Compact's designated supplier. The notice will prominently state all charges to be made by the supplier and will compare those charges to standard offer service. The notice will explain how the customer may opt out of the Power Supply Program and choose standard offer service. (The ESA includes a sample Notification and post card return in Exhibit A). A customer who sends in the opt-out form within the deadlines established will not be switched but will remain on Commonwealth Electric's standard offer or default service, whichever applies.

Customers will retain the right to return to standard offer service for 180 days after initially receiving service from the Compact's designated Supplier.

- **Miscellaneous ESA Provisions**

The ESA contains other provisions which benefit customers but which are not strictly required by Section 134. In §6.1, the supplier agrees, if requested, to cooperate with the Compact in preparing forecasts of energy and capacity requirements. In §6.4, the supplier agrees to cooperate with the local distribution company and fire, police and emergency officials in the event of a power outage, service disruption or other significant events. In §6.5, the supplier agrees to provide responses to reasonable requests for information from the Compact or participating towns. In §6.8 and §9.2, the supplier agrees to cooperate in the development of energy efficiency and renewable energy programs. In Article 10, the supplier commits itself to avoiding outages and making recommendations for system improvements that would reduce outages and service disruptions. In Article 13, the supplier agrees to produce an Annual Report for the Compact and participating municipalities, and to make available upon request certain books, records and reports.

- **SCHEDULE**

The Compact's ESA calls for the supplier to begin delivering energy to large commercial/industrial accounts (G3) and municipal accounts (S1, G1 and G2) as early as December, 2000. The Compact will provide customers no less than sixty days advance notice of the start of service. Plan, §4.1.4; ESA Exhibit A. Thus, the Compact plans to deliver notices to customers as early as October 1, 2000. The Compact anticipates needing approximately three months from the time of approval by the Department until sending notification to customers. During that period, the Compact and its supplier will make all of the necessary arrangements with Commonwealth Electric that will insure a smooth transition for customers. The Compact and its supplier will need to review the Department's decision and make any required changes to the Power Supply Program; obtain necessary legal opinions, final review from town counsels, and signing of the ESA by the towns and counties; set up and test the systems by which the supplier and Commonwealth Electric will exchange data; draft the final version of notices for customers; generate publicity and community education materials in advance of sending notice to customers; set up billing systems; and review market conditions. Therefore, the Compact's schedule calls for approval of the Plan by the Department no later than the first week of July.

- **CONCLUSION**

The Cape Light Compact has worked for more than two years developing its Community Choice Power Supply Program. It is the first municipal aggregator to submit an aggregation plan and supply agreement to the Department for review and approval. The Compact's program will deliver on the promise of the Restructuring Act to bring competitively-priced electricity to all customer classes. It has the potential to facilitate the transition of customers to competitive markets and reduce the transaction costs of doing so. The Compact's Plan and ESA meet the requirements of the Restructuring Act. The Compact hopes that the Department will promptly approve the Plan and ESA.

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1. This Report was prepared by or under the supervision of Robert Mahoney, Chairman of the Cape Light Compact; Margaret T. Downey, Assistant County Administrator for Barnstable County; and Scott Ridley, technical consultant to the Cape Light Compact. The Compact submits this Report on behalf of its member towns. Sixteen of the towns have formally approved the Form of Electric Supply Agreement as of the date of filing this Report. The five remaining towns (Bourne, Chatham Eastham, Orleans and Wellfleet) will take votes at a later date.
2. Sample town votes to participate in a joint contract for power supply and join the Compact are included in Vol. II, Tab 8.
3. A table of the "Meetings of Cape Light Compact Governing Board and/or Subcommittees" is included in Vol. II, Tab 11.
4. Resumes of many of the Compact's Board members, as well as of Margaret T. Downey, the Compact's administrator, are included in Vol. II, Tab 12.
5. See Vol. II, Tab 10 for a list of more than *one hundred* informational meetings the Compact held in connection with establishing the Compact and developing the Plan. See Vol. II, Tab 5 for "Aggregation Plan Development Chronology."
6. See Vol. II, Tab 6 for a sample RFP evaluation form.
7. See Vol. II, Tab 9 for sample votes of the sixteen towns and two counties that have approved the ESA (copies of some votes are not yet available). The remaining five towns will vote at a later date.
8. The Compact believes that incremental postage costs are unlikely to be incurred.
9. The Supplier may, however, delay the start of service based on market conditions, as detailed in the ESA, Exhibit A.

10. From 1990 to 1999, population growth rates in Barnstable and Dukes were 5 to 8 times larger than for the state overall. Population Estimates Program, U.S. Census Bureau.

11. The Compact intends to make a separate filing with the Department in order to obtain access to energy efficiency funds, as authorized by G.L. c. 164, §134(b).